

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Cooper
R-I
31794

FILE: B-217246 **DATE:** July 26, 1985
MATTER OF: Kelsey-Seybold Clinic, P.A.

DIGEST:

1. Solicitation direction to offerors to submit signed commitments as evidence of availability of proposed personnel was satisfied by submission of resumes of individuals that are current employees of the offeror in the locality who are represented as available to work under any contract resulting from the solicitation.
2. Agency determination that innovative management plan should receive a higher score in technical evaluation than plan submitted by incumbent was reasonable where solicitation left method of providing required services largely to the discretion of the offerors and determination was consistent with evaluation criteria.
3. Issues first raised in response to agency report on protest, more than 10 working days after protester knew of additional protest grounds, are untimely and not for consideration.
4. Agency decision to award to high cost, technically superior proposal was consistent with evaluation criteria and rationally based.
5. The protester has the burden of proving bias on the part of selection officials, and unfair or prejudicial motives will not be attributed to those officials on the basis of inference or supposition.

Kelsey-Seybold Clinic, P.A. protests the award by the National Aeronautics and Space Administration (NASA), Lewis

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Research Center, Cleveland, Ohio, of a contract to the Ivy Medical Group, Inc., under request for proposals (RFP) No. 3-529011. The solicitation sought offers on a cost-plus-fixed-fee basis to operate a health screening clinic and fitness center for employees of the Lewis Research Center for 1 year with four 1-year option periods.

We deny the protest in part and dismiss it in part.

The RFP required offerors to submit detailed technical and management proposals describing how the work would be accomplished and business proposals containing projected cost data. The solicitation set forth four major evaluation criteria: mission suitability factors, business and cost management, experience and past performance, and other factors. The mission suitability factors criterion, designed to evaluate the technical competence of the offerors, was the only numerically scored criterion. The mission suitability factors, in order of importance, were personnel, the management operations plan for the health screening program, the management operations plan for the fitness program, and the repair and maintenance of equipment. Business and cost management, including estimated cost, experience, past performance, and other factors such as financial condition and capability, were to be considered, but not scored.

The agency received six proposals in response to the RFP and determined that three were within the competitive range. The NASA committee evaluating the technical proposals gave the following scores for the mission suitability factors: Ivy Medical, 76.0; Institutional Health Management, 72.5; and Kelsey-Seybold, 52.9. These scores did not change after discussions and submission of best and final offers. The committee believed that the Ivy Medical proposal was particularly strong in the proposed use of individual medical experts in key areas, the use of a computerized recordkeeping system, and the adoption of new forms. The committee also believed that proposed new programs in smoking cessation, stress management, risk factor identification, and nutrition and diet counseling would be valuable. Kelsey-Seybold is the incumbent contractor and its proposal included few innovations or improvements to current services, closely paralleling its existing health screening and fitness center operations. The single strength attributed to the Kelsey-Seybold proposal was the fact that no phase-in period would be necessary.

The three proposals were considered to be approximately equal with respect to experience and past performance and other factors. Ivy Medical proposed the highest estimated costs, followed by Kelsey-Seybold and Institutional Health Management. Based on a cost realism assessment, NASA determined that, although the difference between the proposed costs of Ivy Medical and Kelsey-Seybold was 16 percent, the difference in the probable costs of performance by each was approximately 5 percent (\$2,020,572 for Ivy Medical and \$1,916,530 for Kelsey-Seybold). The source selection official determined that the technical disparity between Ivy Medical and the other two proposals was significant, outweighing the higher probable cost of performance by Ivy Medical, and he selected the firm for award.

Kelsey-Seybold contends that NASA did not follow the RFP selection criteria in evaluating the proposals. The protester asserts that NASA could not properly evaluate Ivy Medical's staff quality since the awardee did not submit resumes or identify specific staff to support the contract effort and did not offer signed staff commitments as required by the RFP. Kelsey-Seybold also asserts that NASA improperly evaluated the proposals in a number of respects, including giving higher scores for innovative management operation plans and a proposal to automate appointment and medical records systems. Finally, Kelsey-Seybold contends that NASA improperly accepted an offer at a higher projected cost than it offered and improperly provided Ivy Medical with a guided tour of the Lewis Research Center health facility shortly before the RFP was issued.

In considering these issues, our function is not to evaluate the proposals anew and make our own determinations as to their acceptability or relative merits. The determination of the relative desirability of proposals, particularly with respect to technical considerations, is primarily a matter for judgment of the contracting officials. Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD ¶ 439. Our review of NASA's technical evaluation is limited to considering whether the evaluation was fair and reasonable and consistent with the evaluation criteria. See Deuel and Associates, Inc., B-212962, Apr. 25, 1984, 84-1 CPD ¶ 477.

Contrary to Kelsey-Seybold's assertion, Ivy Medical did specify its proposed staff and include their resumes in its proposal. It did not submit, however, "signed staff commitments as evidence of availability" as requested by the RFP. Rather, Ivy Medical stated in its proposal that all proposed staff were already employed and ready to work

on the contract. The resumes submitted by Ivy Medical state that the individuals are employed by the firm. NASA contends that, since personnel to be used at the NASA facility were current employees to be transferred from other local Ivy Medical facilities, the evaluation committee reasonably believed that signed commitments from the proposed staff were unnecessary. NASA argues that the purpose of the requirement, to show employee availability, was satisfied. NASA also points out that signed commitment letters from key staff members were obtained by the team that evaluated Ivy Medical's cost proposal. They were received, however, by the agency after submission of best and final offers and were not considered in the evaluation.

The portion of the solicitation concerning evaluation of offerors' personnel states that offerors should discuss staff quality in their proposals. In describing considerations of staff quality, the solicitation states only that technical proposals should include "signed commitments as evidence of availability." We do not consider this RFP statement to require commitments for a proposal to be acceptable or for proposals to be evaluated for staff quality. The solicitation merely indicates that staff availability will be an aspect of the evaluation and states that commitments should be submitted for this purpose. It does not bar other evidence that might equally establish availability such as current employment with the offeror in the locality. Thus, we believe that it was reasonable for NASA to conclude that resumes of employees already employed and working who were presented as available for transfer to the Lewis Research Center from Ivy Medical's other facilities provided sufficient evidence of their availability for work.

Kelsey-Seybold maintains that the solicitation fully describes the services to be performed and does not encourage innovation. Therefore, according to the protester, NASA improperly penalized its proposal for not being sufficiently innovative, while increasing Ivy Medical's score for its innovative proposal. Kelsey-Seybold further contends that NASA's evaluation of its proposal was not reasonable because several new medical and fitness programs for which Ivy Medical received evaluation points were outside the scope of the RFP and should not have been given credit in the evaluation. NASA responds that the RFP did not detail how offerors were to meet the work requirements. Rather, the RFP described the functions to be performed and allowed each offeror to submit its own plan to meet those requirements. NASA points out that the

description in the RFP of the management operations plan for health screening specifically requested offerors to discuss any innovative ideas they contemplated. Also, with regard to the fitness program, the solicitation emphasized that the program was not considered to be a static one.

In our view, the solicitation defined the nature and scope of the services to be provided without predetermining how the services could be best delivered. Contrary to Kelsey-Seybold's contention, the RFP did not so dictate how offerors were to meet the work requirements that differences--including innovations--were eliminated. Management operation plans were included as evaluation criteria because NASA anticipated and desired different proposals, and recognizing innovations was clearly consistent with those criteria.

Kelsey-Seybold is correct that several additional medical and fitness programs which Ivy Medical proposed were not clearly within the description of required services in the RFP. Ivy Medical recognized this fact and stated in its proposal that if NASA desired additional services in the nature of dietary counseling, coronary risk counseling, or other employee assistance and screening programs, they would be provided at additional cost to the agency. The suggested new services were not included in Ivy Medical's proposed price. The NASA technical evaluation committee believed that the proposed additions would be valuable and, in its report on the protest, NASA cited the technical committee's report as evidence that the selecting official favorably considered Ivy Medical's offer. However, in our review of the procurement record, we find no evidence that Ivy Medical received any technical evaluation points as a result of its offer, and the selecting official's memorandum, dated November 14, 1984, explaining the basis for selection of Ivy Medical, does not mention the additional programs offered by Ivy Medical. Moreover, the difference in score between Kelsey-Seybold and Ivy Medical for screening clinic examinations, the only subfactor related to Ivy Medical's proposed new programs, was only 1.6 points (7.2 versus 5.6). Even if this entire difference were attributed to Ivy Medical's proposed new programs, it is clear that the protester could not have been prejudiced if the technical evaluation committee in fact did give Ivy Medical evaluation points for its proposed new programs.

Kelsey-Seybold raised a number of other technical evaluation issues in its March 14, 1985, comments on the

agency report that were not included in its November 30 protest to our Office. They include challenges to the reasonableness of NASA's evaluation in such areas as the use of specialists in cardiology and sigmoidoscopy, automation of the appointment and medical records system, staffing for physical examinations, attention to the management of staff problems, and the Kelsey-Seybold professional compensation plan. The protester also questioned the composition of the NASA technical evaluation committee, alleging that one member was biased against Kelsey-Seybold.

We find that all of these new grounds for protest are untimely. These issues, according to the protester's submission, were first raised at a debriefing conducted by NASA on December 5, 1984. While Kelsey-Seybold knew of them at the time of its debriefing, it failed to protest the issues within 10 working days from that date as required by our Bid Protest Procedures. 4 C.F.R. § 21.2(b)(2) (1984); Sperry Flight Systems, B-212229, Jan. 19, 1984, 84-1 CPD ¶ 82. Consequently, we dismiss these bases for Kelsey-Seybold's protest.

Kelsey-Seybold complains that NASA improperly accepted an offer with a higher projected cost than it offered. We do not agree. NASA's award to a higher cost, higher technically rated offeror was consistent with the evaluation criteria set forth in the RFP.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. The RFP did not indicate the relative importance of cost versus technical criteria in the evaluation. Where a solicitation is silent as to the relative importance given to cost, cost and technical considerations are given equal consideration. Riggins Co., Inc., B-214460, July 31, 1984, 84-2 CPD ¶ 137. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, governed only by the test of rationality and consistency with the established evaluation factors. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150. We have consistently upheld awards to offerors with higher technical

scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency had determined that the technical difference is sufficiently significant to outweigh the cost difference. Asset Inc., B-207045, supra.

In this case, mission suitability was the only criterion to be numerically scored. Ivy Medical's mission suitability score (76) was substantially higher than Kelsey-Seybold's (52.9). The two firms were rated equal for the other technical criteria. The cost realism assessment of the offerors' proposals resulted in an estimated probable cost for the Ivy Medical proposal (\$2,020,572) that was relatively close to that of Kelsey-Seybold (\$1,916,530). The selection official concluded that the higher cost of the Ivy Medical proposal resulted primarily from the high quality of the proposed physical examination program and staff. He decided that the improvements to the examination program offered by Ivy Medical justified the marginally higher cost. The selection official also noted that Kelsey-Seybold received a score considerably lower than that of either of the two other offerors, and that its sole strength, in the phase-in area, was attributable to the fact that the firm was the incumbent. Based upon our review of the procurement record, we do not find unreasonable NASA's conclusion that Ivy Medical's proposal was more advantageous to the government despite its slightly higher cost.

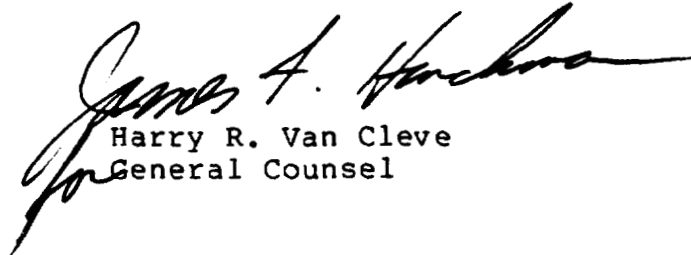
Finally, Kelsey-Seybold contends that prior to the issuance of the RFP, NASA provided Ivy Medical officials with a guided tour of the Lewis Research Center health facility accompanied by the medical officer for the center, who subsequently was a member of the technical evaluation committee. The protester alleges that this was inappropriate and appeared to be favoritism toward Ivy Medical. NASA replies that any company could have toured the health facility at any time before the RFP was issued. Moreover, NASA offered all prospective offerors a tour of the facility after issuance of the RFP.

The protester has a heavy burden of proving bias on the part of selection officials, and unfair or prejudicial motives will not be attributed to those officials on the basis of inference or supposition. Reliability Sciences, Inc., B-205754.2, June 7, 1983, 83-1 CPD ¶ 612. Kelsey-Seybold suggests favoritism based solely upon a tour that was available to any requesting party and was specifically

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offered to all prospective offerors once the solicitation was issued. We do not find any merit in the protester's supposition in this regard.

We deny the protest in part and dismiss it in part.



James A. Hinchman
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